

ORIGINAL

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PUBLIC UTILITIES
COMMISSION

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FILED

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF HAWAII

In the Matter of the)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to Investigate)
Proposed Amendments to the Framework)
for Integrated Resource Planning.)

DOCKET NO. 2009-0108

DIVISION OF CONSUMER ADVOCACY'S PRELIMINARY STATEMENT OF POSITION

Pursuant to the Hawaii Public Utilities Commission's ("Commission") Rules of Practice and Procedure, Hawaii Administrative Rules ("HAR") § 6-61-62, the Division of Consumer Advocacy ("Consumer Advocate") hereby provides its preliminary statement of position related to the Commission's investigation into amendments to the framework for Integrated Resource Planning ("IRP").

I. BACKGROUND.

A. PROCEDURAL.

On or about May 14, the Commission filed its Order Initiating Investigation in Docket No. 2009-0108 ("Opening Order"). The Opening Order named the following as

parties: Hawaiian Electric Company, Inc. ("HECO"); Hawaii Electric Light Company, Inc., ("HELCO"); Maui Electric Company, Ltd ("MECO") (collectively, HECO, HELCO and MECO may be referred to as the "HECO Companies"); Kauai Island Utility Cooperative ("KIUC"); and the Consumer Advocate.¹

In the Opening Order, the Commission required the Parties and Intervenors and Participants, if any, to file a stipulated procedural order within 60 days of the filing of the Opening Order.² However, due to the number of intervenors, the Commission extended the due date of the stipulated procedural order to July 29, 2009. On July 29, 2009, the Parties filed a stipulated procedural order for the Commission's approval.³

Consistent with the stipulated procedural order that was submitted for the Commission's approval, the Parties met to conduct a technical session.⁴ This session was held on September 15, 2009.

¹ Subsequent to the Opening Order, a number of entities filed motions to intervene. On July 1, 2009, the Commission filed its Order Granting Intervention. As a result, the following were granted intervenor status: the Department of Business, Economic Development and Tourism ("DBEDT"); County of Hawaii ("COH"); County of Maui ("COM"); County of Kauai ("COK"); Life of the Land ("LOL"); Haiku Design and Analysis ("HDA"); Hawaii Renewable Energy Alliance ("HREA"); Blue Planet Foundation ("Blue Planet"); Hawaii Solar Energy Association ("HSEA"); JW Marriott Ihilani Resort & Spa, Waikoloa Marriott Beach Resort & Spa, Maui Ocean Club, Wailea Marriott, and Marriott Hotel Services, Inc. on behalf of Kauai Marriott Resort & Beach Club (collectively referred to as "Marriotts"); and Forest City Hawaii Residential, Inc. (collectively referred to as "Intervenors"). Thus, the Intervenors and the entities originally named in the Opening Order will collectively be referred to as "Parties."

² Based on the filing date of May 14, 2009, the due date of the stipulated procedural order would have originally been on or around July 13, 2009.

³ On September 11, 2009, the Parties filed an executed version of the stipulated procedural order with the Commission.

⁴ While the stipulated procedural order originally identified September 11, 2009 as the date upon which to hold the technical session, HDA sought to reschedule the session from the 11th to September 15, 2009, to which all of the other parties agreed.

On September 23, 2009, the Commission filed the Order Approving The Stipulated Procedural Order, As Modified ("Procedural Order") in the instant proceeding.

B. HISTORICAL.

As a result of various concerns such as Hawaii's over-reliance on fossil fuels, emerging awareness of environmental issues, rising consumer energy prices even with relatively stable fuel costs, significant fluctuations in energy supply and demand, perceived difficulties of being able to timely match supply resources with customer demand, the Commission initiated Docket No. 6617, which instituted a proceeding to implement integrated resources planning.⁵ The primary result of this proceeding was "A Framework for Integrated Resource Planning" ("IRP Framework"), which essentially established the guidelines that governed various IRP filings by the energy utilities.⁶ IRP filings by the energy utility companies generally resulted in IRP long term forecasts and action plans.

The long term forecasts were supposed to conceptualize the possible development of various supply-side and demand-side resources to meet the forecasted demand over a 20 year horizon. In order to help implement the vision set forth in that 20 year plan, each integrated resource plan also provided a developed action plan. These action plans were meant to provide a more detailed and specific plan or roadmap over the near future, since while a 20 year forecast can be instructional, it is recognized

⁵ See Order No. 10458, filed on January 10, 1990 in Docket No. 6617.

⁶ The Commission filed Decision and Order No. 11523 on March 12, 1992 in Docket No. 6617, which contained the IRP Framework document. Later, the Commission filed Decision and Order No. 11630 on May 22, 1992, in Docket No. 6617, to incorporate various revisions to the IRP Framework.

that a 20 year forecast is speculative at best and the ability to confidently rely on the entire 20 year forecast is limited. The action plan, however, was limited to a five-year scope. As a result, any action plan was expected to be more concrete about both the forecasted sales and likely mix of supply-side and demand-side resources that would be relied upon to meet the forecasted sales.

The Consumer Advocate notes that the development of the IRP Framework was the culmination of process that spanned more than a few years. In the 1980s, as a result of various forces and interests, the concept of least-cost planning was incorporated within a nation-wide interest in integrated resources planning as a change from the manner and process that the energy industry relied upon to conduct its planning prior to the 1980s. As noted in Order No. 10458, a workshop, "Integrated Energy Resources Planning for Electricity on Oahu," was co-sponsored by the Department of Business and Economic Development and Tourism ("DBEDT"), the Commission, Consumer Advocate, and Chamber of Commerce, and was held in 1987. The result of that workshop was the issuance of Order No. 10458, which opened Docket No. 6617 in 1990. After almost 2 and a half years of numerous and voluminous filings, workgroup meetings, hearings and other matters, the Commission filed Decision and Order No. 11630 on May 22, 1992, which provided the amended IRP Framework. It is this IRP Framework that offered guidance to Hawaii's energy companies when filing

their IRP plans until the recent Commission orders that terminated IRP filings for the HECO Companies and KIUC.⁷

While the IRP Framework served to guide Hawaii's energy utility companies through the IRP filing processes, the results of the IRP Framework were not always well received. Various events, actions, and/or perceptions caused the results of the various IRP plans to be less than satisfactory to various parties. For instance, many criticisms of the IRP plans related to the overall issue of transparency of how the preferred long-range and action plans were developed. Another area of criticism related to the extent to which advisory group input was considered. Others also criticized that the plans, even when actually approved by the Commission, were not enforceable and that the utility companies could deviate from those plans too easily. These are only some of the criticisms that were leveled at the IRP process and the results.

The Consumer Advocate certainly had its issues with the IRP process as well, but believed that the process was useful and could be improved upon to increase its acceptability to a wider group of interested stakeholders. That being said, however, given the subject matter involved and the diverse interests of the various stakeholders, the Consumer Advocate recognizes and contends that it is unlikely that any process would be able to fully satisfy the interests of all interested stakeholders.

The Consumer Advocate assumes, however, that other parties may not have seen the IRP process as being salvageable and encouraged a different process to be

⁷ See Order Closing Docket filed on November 26, 2008 in Docket No. 04-0046 for HELCO; Order Closing Docket filed on November 26, 2008 in Docket No. 2007-0084 for HECO; Order Closing Docket filed on December 8, 2008 in Docket No. 04-0077 for MECO; and Order Denying Request to Suspend Proceeding and Closing Docket filed on February 18, 2009 in Docket No. 2006-0165 for KIUC.

developed to address how planning should be conducted for Hawaii's energy industry. This assumption is based on observations, such as the various proposed bills that appeared in recent Hawaii legislative sessions that related to the energy industry and related to a wide range of energy topics, such as how the industry should be regulated, renewable portfolio standards, electric rate design, and energy efficiency standards, to name a few.

On January 31, 2008, Governor Linda Lingle signed a memorandum of understanding ("MOU") with the United States Department of Energy ("DOE") signifying a commitment to implement a Hawaii/DOE Clean Energy Initiative. The MOU established a long-term relationship that seeks to facilitate the permanent transition of Hawaii to a clean energy model. While the MOU is not enforceable, the responsibilities of the Hawaii include:

- Identifying the critical State-based stakeholders needed to participate in the initiative;
- Establishing the State-mandated processes needed to review and ultimately enact the policies, educational programs and other provisions of the strategic plans needed to enable the transformation in various areas of energy consumption;
- Promoting the goals and recommendations to the general public, including consumers, businesses and other organizations to increase the likelihood of widespread understanding and embracing of the goals of the initiative; and

- Developing the technical and economic tools necessary to realize the goals of the initiative.

It is this MOU that created the momentum that gave rise to the *Energy Agreement Among the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and the Hawaiian Electric Companies* ("Energy Agreement" or "HCEI Agreement"), which was signed by the participating entities on October 20, 2008. The Energy Agreement memorialized various commitments made by the signatories related to various measures designed to facilitate the realization of Hawaii's clean energy initiative. Included within the commitments are sections 32, "Clean Energy Scenario Planning" ("CESP"), and 33, "Clean Energy Scenario Plan." Sections 32 and 33 discuss many matters, but on page 37 of the Energy Agreement, the following commitments are made:

[HECO] will complete and submit the Hawaiian Electric IRP-4 to the Public Utilities Commission by September 30, 2008. The Commission will receive the Hawaii Electric IRP-4 and will be requested to close the docket and suspend HELCO's and MECO's IRP-4 dockets.

[HECO] shall request Commission approval to implement items in the Action Plan that otherwise require approval through the IRP-4 process.

The parties will request that the Commission open anew docket to establish the CESP process.

Pending the Decision and Order establishing the CESP process, each Hawaiian Electric utility will continue to meet with its Advisory Committees and file annual updates to its respective IRPs.

The parties agree that the specifics of the CESP Process, including the new CESP objectives and framework, are subject to Commission review and approval.

As a result of the commitments made in the HCEI Agreement, the instant proceeding commenced. The following is the Consumer Advocate's initial thoughts on the issues surrounding various issues, such as the clean energy initiative, the Energy Agreement, and the possible modifications to improve the now defunct IRP process.

II. DISCUSSION.

The Consumer Advocate would first like to note that the Commission has set an ambitious schedule within which to finish all of the necessary investigations, discussion amongst the stakeholders, presentation of facts and opinions on how the CESP should be developed, as well as deliberations. While the Opening Order is silent as to when a decision and order might be filed in the instant proceeding, the Commission required the Parties to agree to a schedule that would allow panel hearings during the week of November 30, 2009. Thus, whereas the deliberations on the IRP Framework spanned the course of years, the development of the CESP Framework has been limited to months.

Since the Consumer Advocate's opinion was that the IRP Framework was still a viable medium through which planning could occur, albeit with certain modifications, the Commission's imposed time limitations, while certainly challenging, is seen as a possibility. If, however, the Consumer Advocate's assumption that other parties viewed the IRP process as untenable is accurate, however, it is likely that the schedule in the instant proceeding may not be feasible since the required time to attempt resolution of most issues could probably not be accommodated within the prescribed schedule.

Pursuant to the Procedural Order, the Commission set forth the following issues in lieu of the issues that were agreed to by the parties:

- What are the objectives of CESP and how do they differ from the objectives of IRP?
- What is the basis for each of the proposed changes to the IRP process, and are those changes reasonable and in the public interest?
- Whether the proposed changes to the IRP process should include changes to reflect differences between electric cooperatives and investor owned utilities?
- What should be the role of the state's public benefits fee administrator?

The Consumer Advocate's following discussion will not dedicate specific sections to each of the above issues, but will offer various recommendations within which the above issues will be discussed.

A. THE CESP FRAMEWORK SHOULD BE APPLICABLE TO ALL ENERGY UTILITY COMPANIES.

In the IRP Framework, the affected utility companies were the HECO Companies, KIUC, and the Gas Company ("TGC").⁸ As acknowledged by the Commission in Order No. 10458, TGC was not originally included in the assessment and scoping report that was developed by an IRP task force, but there was merit to including TGC in the IRP Framework since the underlying principles and objectives were not only applicable to electricity companies, but also to TGC.

⁸ At the time, KIUC was known as Kauai Electric Division of Citizens Utilities Company. In addition, at the time, TGC was known as GASCO, Inc.

The Consumer Advocate acknowledges that the CESP Framework that was drafted by the HECO Companies is guided to some large degree by the Energy Agreement. In the Energy Agreement, section 32 deals with the concept of clean energy scenario planning as a replacement of the IRP process. Since the HECO Companies were the only utility companies who were signatories to the Energy Agreement, it is understandable that the draft CESP Framework circulated among the Parties to this docket, while reflective of a revised original IRP Framework, focused primarily on the HECO Companies. In other words, there was no clear acknowledgement in draft CESP framework that it should be applicable to KIUC, let alone TGC.

As set forth in the Energy Agreement, however, the CESP is meant to replace the IRP process. Based on the Commission's decisions, closing related IRP dockets and likewise, terminating the IRP plans for the HECO Companies and KIUC, it appears that the Commission agrees with this understanding. This understanding, coupled with an understanding of what the CESP is designed to accomplish highlights the need to ensure that the CESP Framework is relevant to all energy utility companies. To explain, if the CESP is not only supposed to facilitate the "traditional" objectives of IRP but also supplement those objectives with a clear focus on permanently migrating to clean energy industries, it seems patently obvious that both KIUC and TGC should be included within the scope of the CESP Framework. Since KIUC is an electric utility company that also utilizes imported fossil fuels, KIUC shares the same issues and responsibilities as the HECO Companies, as it relates to the required planning on how

to match energy supply with consumer demand but also on how to introduce a growing penetration of renewable or clean resources.

With the IRP process, there were valid observations that the need for TGC to undergo the various requirements of developing, establishing and implementing a Commission approved IRP plan was marginal or nonexistent since TGC production capacity greatly exceeded the customer demand. The CESP is, however, supposed to go beyond just planning on how to best match supply-side and demand-side resources with customer demand. The clean energy focus of the CESP and the goal of reducing Hawaii's reliance on imported fossil fuels are factors that should be applied to all of Hawaii's energy producing entities, including TGC. In fact, recent events suggest that TGC is already exploring possible clean energy opportunities. For example, as reported in various media, TGC has entered into a memorandum of agreement with Primoris Renewables to explore the possibilities of relying upon agricultural feedstock and landfill gas to produce biomethane, renewable diesel and/or similar products.⁹ In addition, as acknowledged on the EPA website, TGC has long supported Combined Heat and Power ("CHP") projects in Hawaii.¹⁰

Thus, notwithstanding the fact that the Energy Agreement was not developed and signed by all of Hawaii's energy utility companies but consistent with the understanding that the CESP is a "clean energy enhanced" version of IRP, the Energy Agreement's goal of developing CESP processes to replace the IRP processes should

⁹ See The Gas Co. commits to renewable energy, by Pacific Business News at <http://pacific.bizjournals.com/pacific/stories/2009/08/24/daily10.html> and The Gas Company LLC and Primoris Renewables Plan New Options for Renewable Energy for Hawaii by Reuters at <http://www.reuters.com/article/pressRelease/idUS133409+24-Aug-2009+BW20090824>.

¹⁰ See <http://www.epa.gov/chp/partnership/partners/thegascompany.html>.

not be limited to just the HECO Companies. As will be discussed further in this document, however, the inclusion of KIUC and TGC within the CESP process should acknowledge the differences between the HECO Companies, KIUC, and TGC in terms of all applicable factors that should be considered in the planning process, such as ownership structure, industry, existing supply and demand side resources, etc.

B. THE CESP FRAMEWORK SHOULD BE SOMEWHAT GENERAL IN NATURE AND NOT TOO SPECIFIC TO AVOID MAKING THE FRAMEWORK TOO LIMITED.

To facilitate the development of the CESP process, the HECO Companies were tasked with developing and circulating a draft document that could serve as a strawman for other parties to offer comments. The HECO Companies' draft essentially took the original IRP Framework and incorporated numerous changes to ensure that the resulting document would comply with the HCEI Agreement. While certainly understandable, the HECO Companies' approach to developing the draft CESP Framework resulted in a document that was somewhat too specific towards the commitments that the HECO Companies had made in the HCEI Agreement and, as a result, not general enough to be applicable to other energy industry companies.

1. The Framework Document Should Not Make Excessive References to Other Documents or Citations.

It is the Consumer Advocate's opinion that any framework should not be too detailed. Otherwise, the usefulness of any such framework may be unnecessarily constrained by those details. That is, a framework with too many specific requirements will not be consistent with an outline or general guidelines that a framework should

provide. With a detailed framework, any necessary deviation from that framework will require additional administrative efforts to accommodate that necessity or might require so many exemptions or waivers that the detailed framework would be rendered somewhat irrelevant.

As currently drafted, the framework makes many references to the Energy Agreement and to the specific commitments that the HECO Companies have made. If there is general consensus that the framework should apply to Hawaii's energy utility companies, then most references to the Energy Agreement should be removed. There are commitments made in the Energy Agreement that should not or cannot be applied to KIUC or TGC. Thus, the CESP framework should be redrafted such that the specific commitments made by the HECO Companies are removed or set forth so that those commitments are options that can be considered, but not required. As will be discussed later, if the Parties believe that there is some utility to having specific commitments or details in writing, those details could be included in an addendum or appendix to the framework. This idea will be elaborated upon in a later section of this PSOP. Otherwise, if the appropriate revisions are made, the resulting document should be crafted to be general enough to not only be applicable to all of Hawaii's energy utility companies but also last through minor changes in external factors or conditions.

2. If Details Are Necessary, the Use of Addenda or Appendices Would Allow Those Details to Be Part of the Framework Without Limiting the Applicability of the Framework.

To make clear, the Consumer Advocate supports the clarity of having sufficient details in most documents to remove unnecessary ambiguities that might otherwise be

present. The Consumer Advocate's suggestion that the CESP Framework should be general enough to apply to all of Hawaii's energy utility companies and to remove excessive references to outside documents or agreements was to increase the likelihood that the resulting framework would be relevant for as long as might be reasonable. For example, while various criticisms were made about the IRP Framework, the IRP Framework provided the guidelines for an IRP filing from 1992 until 2009, even though many changes occurred within the energy industry.

To that end, it might be reasonable to draft a framework that is general enough to apply to Hawaii's energy utility companies, but rely upon the use of separate and distinct attachments. An attachment or appendix could be created for each energy utility company and that attachment could serve the purpose of reflecting any requirements specific to a single utility company. That way, when sufficient need exists to support a change or changes to a detailed section or requirement within the CESP process, it is easier to make that change or changes to a single appendix or addendum rather than making changes to the framework itself.

In addition, to the extent that certain parties might desire to have the governing Federal, State, or County energy policy directly cited or otherwise quoted in the CESP Framework, the actual text of the statutes, ordinances or rules could be included in the appropriate appendix. And, when there are subsequent revisions to those statutes, ordinances or rules, the CESP Framework itself would not need to be revised – only the applicable appendix or appendices would need to be modified. One possible example would be the inclusion of the full Energy Agreement for the HECO Companies, which

would outline the commitments that the HECO Companies have made, but would not necessarily be relevant to KIUC or TGC.

C. GREATER ATTENTION SHOULD BE GIVEN TO THE RECOGNITION OF PUBLIC PARTICIPATION AND TRANSPARENCY WITHIN THE FRAMEWORK GUIDELINES.

As already discussed, there were various criticisms made about the IRP process and the outcome of those efforts. One recurring and major criticism related to the lack of transparency and how the utility companies did not seem to actually implement many of the recommended ideas from the advisory groups. The Consumer Advocate would like to offer the following suggestions for consideration as possible means to ameliorate some of these criticisms.

1. The Framework Should Require That There Should Be at Least One Scenario Reflective of Public Only Factors.

As mentioned, various parties would often criticize the fact that the utility preferred plan reflected none or few of the suggestions or recommendations made by advisory groups and that it was unclear as to how the utility company objectively decided what levels of penetration or balance of resources to use, how resources were weighted, etc., to name a few criticisms.

Thus, the Consumer Advocate recommends that the CESP process should incorporate the idea that at least one scenario should represent a product that is determined solely by non-utility parties. The parties, other than the utility company, would be responsible for working together to reach consensus on the necessary inputs into a scenario and the utility company would then perform the necessary modeling

work to generate the scenario. This proposal would allow the parties an opportunity to see the results of their preferred objectives, resources, etc. and compare those results to the other scenarios run by the utility company. Then, if the utility company files a preferred plan or set of plans for Commission approval and certain parties object to the plan, the parties would have an illustrative plan for Commission consideration, rather than simply offering qualitative judgments that do not necessarily lend themselves to defined modifications to a plan or set of plans that could be ordered by the Commission.

The Consumer Advocate is proposing that only one scenario be based on customer inputs at this time. The number of "public only" scenarios could be later increased, if deemed reasonable. At this time, however, the Consumer Advocate believes that the Parties need to increase their collective understanding as to what each scenario might represent, how it might be used, etc. before suggesting more iterations of "public only" scenarios. If the administrative costs associated with the utility companies, such as the HECO Companies, providing a certain number of scenarios and action plans exceed a reasonable level of costs, it may be necessary to limit any such "public only" scenario or scenarios. If, however, the administrative costs are relatively low to run additional "public only" scenarios, future consideration can be given to whether it might be reasonable to require additional "public only" scenarios.

2. Consideration Should Be Given to Whether the Framework Should Require the Open and Complete Disclosure of All Relevant and Non-Confidential Analyses to the Public.

As already noted, another major criticism was the lack of transparency involving the analyses or lack of analyses that could be provided to justify the selection and

weighting of various resources and other related inputs into the development of the potential long-term and action plans under IRP. If not addressed, it is quite likely that similar criticisms would quickly arise and would increase the chances that many parties would view the CESP process with the same jaded perspective that plagued the IRP process.

As a possible means of mitigating concerns regarding the transparency of the weighting and selection of plan resources, the Consumer Advocate recommends that the CESP framework include provisions requiring that each applicable energy utility company make available all relevant and non-confidential analyses to the public. This recommendation might have been somewhat daunting in the past, but current technology facilitates the wide dissemination of such information. The utility companies could place the relevant information on their web sites, which would then allow interested stakeholders to review the various analyses that are considered in developing the scenarios and action plans.

As can be noted by the web site that HECO has developed, a significant amount of information has already been made available. If, however, the utility companies can provide the analyses behind the various decision and selection processes, this might help remove much of the perceived shroud surrounding the preferred plans of the past. Hopefully, with the relevant information and analyses made available, the Parties can then focus on discussing technical and subject related differences rather than getting hindered by arguments over less substantive matters. Furthermore, if the utilities rely upon their respective websites, there will be a general reduction in the paper that might otherwise be required. Another possible consideration is that the utility companies

could rely upon a shared web site as the repository for the information to maintain a general sense of consistency in terms of web site navigation and use across all of the utility companies.

Currently, the draft framework does not include any type of specific discussion on the type of reports or information that should be made available. Assuming that there is agreement with the concept of identifying the non-confidential information and analyses and making that information available, the Parties could consider the reasonableness of including some discussion in the framework as to the type of and manner that the information and analyses will be made available.¹¹ Earlier, the Consumer Advocate recommended that the Parties should avoid making the proposed framework too detailed and specific. The Consumer Advocate still advocates such an approach for a framework document. Thus, if the framework will be modified to include some discussion as to the information and analyses that will or should be made available, that discussion should not include specific identifications of report names or similar type of detail. Otherwise, any time a change is required, the administrative efforts to modify the entire framework to reflect something as prosaic as a change in the name of a report might require significant administrative efforts.

It should go without saying, but the Consumer Advocate believes it is worthwhile to note that even if this recommendation is implemented, differences are still likely to occur with respect to the selection and evaluation of measures and resources selected for the preferred plan or plans. Different stakeholders have different interests and

¹¹ Confidential information and analyses that are integral to the CESP process could and maybe should also be made available on the website, but the appropriate administrative and technical measures should be in place before such information and analyses are made available.

objectives and those differences will support different values and weights on common issues and on the measures and resources to be evaluated. Not to oversimplify this matter, but as an example, there are three criteria that can be considered in electricity planning: 1) cost; 2) reliability; and 3) penetration of renewable resources. While it would be ideal to have low overall costs, high system reliability and high penetration of renewable resources, that is not a reasonable expectation at this time.¹² Thus, if one party supports high penetration of renewable resources and low cost, and believes that de-emphasizing reliability is reasonable, that party would be likely to be in conflict with a party emphasizing high reliability and low cost. That being said, however, the hope is that the discussion could focus on the relative policy and underlying analyses, as opposed to broad policy statements that are not supported by analyses.

Furthermore, if the issue arises, it should be made clear that the Consumer Advocate is not recommending that relevant confidential information should be made unavailable. The concern is that if the appropriate protections and agreements can be reached, the idea and concept of greater dissemination of information will stall due to what is likely only a subset of information. Greater good can be achieved by making the public and non-confidential information available as soon as practical rather than allowing that dissemination to be unnecessarily delayed. Thus, if the appropriate arrangements and measures, such as password-protection for websites, etc. can be cost-efficiently and quickly implemented, the Consumer Advocate would support, to the extent possible, making relevant non-public information available as well.

¹² To make clear, the definition of cost used in this example is limited to those costs that are currently considered when developing the bills that are received by consumers. Qualitative costs, such as those related to externalities or other costs that are difficult to monetize, are not being referred to within this example.

D. THE CESP FRAMEWORK SHOULD CREATE AN ONGOING DYNAMIC PROCESS THAT ACCOMMODATES THE FLEXIBILITY THAT IS REQUIRED TO ALLOW FOR CHANGES AND/OR THAT OCCUR BETWEEN ACTION PLANS.

Given the scope and intent of the IRP process, it is reasonable to expect that a certain amount of care and deliberation should occur to maximize the likelihood that the product is meaningful and useful. However, the IRP process seemed to move at a glacial pace at times. The lack of clear advancement and accomplishment would appear to have given support to possible claims that the IRP process did not result in productive outcomes. Thus, reasonable modifications to address this shortcoming would be in the public interest, especially since the anticipated scope and intent of the CESP process should exceed that of the IRP process. If the Parties agree that the scope and intent of the CESP process exceeds the IRP process, the need to address perceived shortcomings with respect to the underlying IRP Framework is imperative in order to ensure that the CESP process is not doomed to meet the same end and criticisms as the IRP process.

1. The CESP Framework Should Reflect Ongoing Processes Not Be Characterized By Significant and Distinct "Stop and Go" Activities.

In the past, the Consumer Advocate has made the observation that the IRP process tended to consist of numerous and lengthy intervals between plans and even within the planning process. The Consumer Advocate also contended that these intervals between steps and plans contributed to a less than ideal planning process. Since the scope of any IRP plan was covering an entire electric grid, such interruptions required significant efforts to initiate or re-initiate momentum for the process to be

completed. This made the IRP process unnecessarily sluggish and inefficient. The Consumer Advocate acknowledges that the IRP process was just one proceeding among many and every proceeding required the appropriate attention from the Commission and the Consumer Advocate. However, it seemed at times that the IRP process was an afterthought and efforts toward the IRP process did not always yield desirable results.

With this shortcoming in mind, the Consumer Advocate strongly suggests that the CESP framework should incorporate processes that are continuous and dynamic, rather than intermittent and relatively static. The Consumer Advocate is concerned that, given the expanded scope of the CESP processes as compared to IRP processes, similar intermittent and "stop and go" type of meetings between and during plans will increase the likelihood that the CESP process will be no more successful than the IRP processes. If the CESP process incorporates the requirement of regular measures, such as advisory group meetings, etc. to be held, even after a filing has been made and approved by the Commission, the Consumer Advocate contends that the overall process has a greater chance of producing desirable results. Part of the basis for this contention is that during these regular meetings, the opportunity to evaluate the current condition of the action plan and overall progress will be present. Such regular evaluations could be used to identify possible revisions to the action plan and/or to identify alternative scenarios that might influence the implementation of more preferable resources or actions. During these regular meetings, if there have been any notable or significant changes in renewable technologies or other relevant factors, such as

environmental concerns, cost assumptions, etc., the opportunity to evaluate the need to promote a different scenario and action plan can be discussed in a timely fashion.

The Consumer Advocate also envisions that the new CESP processes might allow a limited number of scenarios and action plans to be developed on an ongoing basis to reflect known or possible changes in any of the relevant inputs. That is, even if there is a plan or set of plans that have been recently approved by the Commission, the interested stakeholders, in the regular meetings, could discuss possible modifications to incorporate possible changes. For instance, if the forecasted demand changes from the forecast relied upon last year or if a new technological breakthrough reduces the cost and/or footprint of PV panels, a new plan or set of scenarios may be reasonable. Then, when the next regulatory cycle rolls around, the stakeholders will have already been working on the possible scenarios and will not have to essentially start from scratch.

2. In Order to Allow for Various Possible Changes, the CESP Framework Should Allow Flexibility in the Action Plans.

If the recommendation to encourage an ongoing and dynamic process is adopted, the Consumer Advocate also encourages that the framework recognizes the need for some degree of flexibility. An ongoing and dynamic evaluation process, even between the filing of plans with the Commission, will allow the interested stakeholders to address various possible factors that could easily affect the selection of the appropriate mix of resources that will best serve Hawaii and meet its energy needs and facilitate reaching its renewable energy goals. Examples have already been given, but such factors might include, but are not limited to, the following:

- New renewable energy technologies;

- Changes in the inputs or materials used in the manufacturing of units used to generate renewable energy;
- Changes in the inputs or materials used in the manufacturing of fossil-fueled units;
- Changes affecting customer count and/or demand (e.g., addition or departure of a large customer);
- Changes in the utility infrastructure or operation that might affect renewable or energy efficiency possibilities (e.g., in-service date of a new customer information system that allows more involved billing and rate design plans);
- Unforeseen and/or urgent system requirements; and
- Changes in the requirements set forth in governmental statutes, ordinances and/or rules.

The above list is not comprehensive, but any of the above changes or others that have not been identified could highlight an alternative mix of resources that might not be possible if the framework includes language that is too prescriptive. The Consumer Advocate has concerns that with the greater understanding and interest in energy and the energy industry, the impact of energy on today's society and environment, rapidly changing technology and other factors, it is not only possible but probable that changes will occur between formal filings with the Commission and having a process in place that is too static and inflexible will not be in the public interest.

Further common understanding needs to be developed as to the number and nature of the scenarios and plan(s) that will be developed. The Consumer Advocate is

not recommending that the details regarding the number and nature of the scenarios and plans should be memorialized in the framework, but whatever language is included in the framework should not be so specific and exacting as to limit the flexibility that should be allowed.

3. It Should Be Made Clear that the Commission Should Retain Enforcement Powers, But Not at the Expense of Unnecessarily Restricting Reasonable Divergence From Any Particular Action Plan.

The Consumer Advocate is well aware that one of the criticisms of the IRP process was that the final approved plan was essentially non-binding. That is, a utility company did not have to implement the final plan single-mindedly without any deviations. Thus, even though there were always parties that might have had issues with the IRP action plan that was selected or approved, some parties generally had even more issues when the utility company deviated from the plan. As a result, some parties recommended and perhaps continue to recommend that the process and the action plan should include some sort of enforcement powers to ensure compliance. As discussed above, however, the Consumer Advocate strongly supports the need to ensure that flexibility exists within the process.

To be made clear, while the Consumer Advocate advocates the need for flexibility, it is the Consumer Advocate's opinion that the Commission already had and continued to retain enforcement powers that would have allowed the Commission to take the appropriate actions if a utility company proposed to proceed in a manner that was clearly not in the public interest. Thus, just as the IRP framework did not affect or constrain the Commission's power utility company actions, the Consumer Advocate

believes and supports the concept that the CESP framework, when adopted, should not and will not affect the Commission's powers. As such, the need to include language in the framework to impose specific enforcement powers or penalties appears inappropriate.

Processes and procedures are already in place to facilitate the review necessary to verify that capital investments or utility decisions do not widely deviate from any action plan. For instance, as a result of the Commission's General Order No. 7, any project that represents a major investment for a utility company requires that the utility company file an application with the Commission before committing significant monies. To so otherwise puts the company's entire investment at risk for non-recovery. By way of example, for every capital improvement project application that is filed with the Commission, the Consumer Advocate considers whether the proposed project is consistent with the IRP action plan (when they still existed) and if the proposed project was inconsistent, discovery was usually submitted to determine the reasons.¹³ If a company could not justify the reasons for a deviation from the IRP plan, the Company would then have to justify to the Commission why such a deviation was reasonable and in the public interest.

Furthermore, as a result of Docket No. 03-0372, the Commission approved a framework that required the electric utility companies to procure new generation under a competitive bidding process. If any exceptions are to occur, such exceptions require

¹³ For this reason, the termination of the electric utility company's IRP process and the results of that decision have caused some consternation to the Consumer Advocate. Without the IRP action plan in place, there are questions whether some proposed projects, while maybe reasonable in the short-run, may not necessarily be consistent with the public interest in the long-run.

specific Commission approval through an application process before a waiver or exception will be granted. This process also protects against unreasonable deviations from a Commission approved plan. If in an action plan, the need for additional resources was identified, the competitive bidding process would facilitate the review of various means to meet the perceived or identified system need.

As a result, while the Consumer Advocate certainly supports the regulation of the utility companies to ensure that unreasonable deviations from any action plan do not occur, the Consumer Advocate contends that including language in the framework to identify specific restrictive criteria or penalties is unnecessary at this time. The Commission already had and continues to have the ability to review and command the utility companies regarding utility planning decisions that were not reasonable and in the public interest.

E. THE FRAMEWORK SHOULD MAKE CLEAR THE EXPECTATIONS REGARDING ENERGY EFFICIENCY ADMINISTRATORS AND THE ASSOCIATED SCOPE OF RESPONSIBILITIES.

In the past, the utility companies were generally responsible for all aspects of the portfolio of tools that could be used to balance supply and demand. Currently, that is not the case for the HECO Companies, where the energy efficiency measures are now administered by a third-party.¹⁴ As currently drafted, there are sections in the draft CESP Framework that relate to the third party administrator, such as II.F, *Public Benefit*

¹⁴ As a result of the investigation in Docket No. 05-0069, the Commission ordered that all of the energy efficiency programs once under the HECO Companies' control were to be transferred to a non-utility market structure (See Decision and Order No. 23258 filed on February 13, 2007). Further investigation related to third-party administration of energy efficiency programs was conducted in Docket No. 2007-0323. For purposes of this discussion, the Consumer Advocate's reference to the third-party administrator is synonymous to the public benefits fee administrator.

Fee ("PBF") Administrator's Responsibility, and IV.C, Demand-Side Forecasts. The Consumer Advocate offers the following comments.

First, as specifically recognized in the Commission's Decision and Order No. 05-0069, there is general deferment to KIUC with respect to the energy efficiency goals and administration since KIUC, under a cooperative ownership structure, differs from the HECO Companies, which are under an investor-owned structure.¹⁵ As a result, the concerns are somewhat different for these two types of ownership structures. Thus, consistent with the recommendation that the CESP framework should be drafted to be applicable to all of Hawaii's energy utility companies, any language in the CESP framework dealing with energy efficiency matters and administration should be worded carefully and broadly enough to be applicable to all utility companies without creating the need for KIUC or TGC to seek waivers or exemptions from those provisions.

Notwithstanding the general deferment of energy efficiency goals and administration related to KIUC, the Consumer Advocate is interested in determining whether it is worthwhile to consider whether the third-party administrator should actively participate in KIUC's CESP process, when initiated. While the goals and administration of energy efficiency programs may be left with KIUC, it is possible that there may be synergies and economies of scale that could be achieved by allowing the third party

¹⁵ The Consumer Advocate notes that the general deferment was left such that determination of energy efficiency goals, etc. would be determined in KIUC's IRP process, but since the Commission has effectively suspended or terminated all IRP matters pending the outcome of the CESP framework development, the question of what can be implemented and administered exists.

administrator to participate and contribute to the energy efficiency programs of the HECO Companies and KIUC.¹⁶

Finally, assuming that the framework is modified to be broader to ensure its applicability to Hawaii's energy utility companies, the Consumer Advocate contends that, to the extent possible, the framework should be fairly clear as it relates to the general expectations and responsibilities of the third-party administrator. While increasing the penetration of energies produced through indigenous renewable sources is a clear, desirable goal, energy efficiency is also an important tool in Hawaii's portfolio of resources that can facilitate the objective of weaning off of imported fossil fuels. In fact, as recognized in the Commission's Decision and Order filed on September 30, 2009 in Docket No. 2009-0029, in re *In the Matter of Instituting a Proceeding To Consider the Energy Independence and Security Act of 2007 Standards*, the need to adopt Federal energy efficiency investments standards is unnecessary since efficiency standards already exist in Hawaii, the Commission is currently considering decoupling,¹⁷ and the Commission has transferred administration of energy efficiency programs to a third-party administrator. Given the level of current society's reliance on technology, which is generally powered by electricity, customer demand, if not properly checked, can continue to increase at a pace that may outstrip the combined ability of renewable resources and fossil fuel resources to meet given Hawaii's limited land and associated

¹⁶ The third-party administrator's role with respect to TGC and its CESP, if applicable, should also be considered.

¹⁷ In Docket No. 2008-0274, the Commission is currently deliberating various issues surrounding decoupling and the potential impact on the HECO Companies and their financial integrity and the various possible impact on the public interest, including but not limited to the results of energy efficiency measures.

resources. Thus, energy efficiency and related demand-side measures must be exploited as well.

As such, it is imperative that expectations and responsibilities of the third-party administrator are made clear to ensure that energy efficiency programs contribute to Hawaii's transition and not be relegated to some static level of contribution towards Hawaii's objectives. The expectation should be that the third-party administrator either on its own, through sub-contractors, or whatever means, must not only ensure the administration of existing programs, but must also aggressively seek out programs and measures that can facilitate Hawaii's goals and objectives. It is not clear that the full range of cost effective and/or large impact energy efficiency measures and programs has been exhausted. If this were the case, the justifiable need to transfer the administration of energy efficiency programs to a third-party administrator would be minimal or non-existent and would not be in the public interest, since unless that third-party administrator could perform such tasks more efficiently than the utility company, the transfer would only result in additional overhead costs.

Thus, the Consumer Advocate contends that it must be made clear that the third-party administrator should be expected to aggressively investigate all reasonable measures and programs that might be added to the already existing portfolio of energy efficiency programs. Possible measures and programs should then be brought up for discussion within the advisory group meetings. Some thought should also be given as to the necessary participation by the third-party administrator in other forums, such as legislative action, that have historically affected the development of energy efficiency measures, programs, standards, and implementation requirements.

F. THE FRAMEWORK SHOULD INCLUDE SECTIONS WHICH ACKNOWLEDGES CHANGE AND POTENTIAL TOOLS THAT MIGHT BE USED.

Other possible revisions to the framework affect the language reflected in Sections IV (Planning Considerations) and V (Pilot Demand-Side Management Programs). Based on the understanding that the scope of the CESP differs from the IRP and that the available tools and technologies have changed, the following revisions should be considered:

- For fuel forecasts (as discussed in Section IV), the utility company or other parties capable of doing so, should consider whether fuel forecasts should include consideration of other types of fuels such as biofuel or other fuel types and sources. Such forecasts should consider not only the cost of the fuel, but also the availability. Furthermore, the Parties may want to *consider whether forecasts can be developed for the certain commodities* that may be useful when evaluating alternatives, such as the cost of PV related and wind related as compared to fossil fuel related commodities.
- Consistent with the Consumer Advocate's position set forth in Docket No. 2008-0074, some consideration should be given to separately analyzing demand response and load management programs (as discussed in section IV) since, while related, these two concepts are not thought to be synonymous. Whether separated or not, thoughts as to development and administration, whether by utility company or by the third-party administrator, should be outlined.

- Currently, the draft section V only recognizes pilot demand side management programs. The Parties and Commission should consider whether this section should be expanded to reflect a potentially greater array of pilots that might be conducted under the CESP Framework. For instance, it might be reasonable for the CESP Framework to reflect the possibility of renewable energy unit pilot programs and depending on the results of that pilot, data and information about the cost-effectiveness, system impact, etc., can be used in developing full scale implementation.¹⁸

Given the transfer of administrative duties from the HECO Companies to the third-party administrator, additional language may need to be drafted to acknowledge the separation of duties and differences between KIUC and the HECO Companies relating to pilot programs. However, the possible changes to sections IV and V might benefit from further discussion amongst the Parties as to all of the revisions that should be reflected.

III. RECOMMENDATION.

The Consumer Advocate's comments regarding the draft CESP Framework reflect the current status of its evaluation. The Consumer Advocate continues to consider and evaluate the issues surrounding the termination of the IRP process and

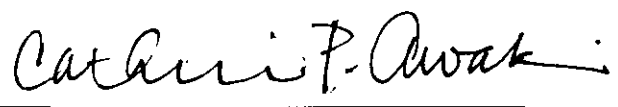
¹⁸

As an aside, the Consumer Advocate notes that the HECO Companies have removed the language that requires the utility company to "clearly articulate the parameters of the program, the objectives to be attained by the program, the expected level of achievement of the objectives, the measures by which the attainment of the objectives is to be assessed, the data to be gathered to assist in the evaluation of the pilot program, and the expenditure it proposes to make by appropriate cost components." The Consumer Advocate contends that there is much value in this omitted language and that it should remain in the CESP Framework.

the intended development of the CESP Framework and associated processes. Given the termination of the IRP process for each of Hawaii's electric companies, it is imperative that a new process be implemented as soon as practicable since without such a planning process, the distinct possibility that the planning process will become more opaque becomes more real. The planning processes must continue, with or without IRP or CESP. If not addressed in a timely fashion, the Consumer Advocate is concerned that certain decisions will have to be made without the benefit of having an open process, such as IRP or CESP, to facilitate those decisions. The comments offered by the Consumer Advocate in this proceeding are intended to help develop a framework that improves upon the IRP Framework and to help facilitate the opportunities for interested stakeholders to participate in a meaningful planning process that will complement other regulatory processes that have been approved by the Commission.

DATED: Honolulu, Hawaii, October 2, 2009.

Respectfully submitted,

By 

CATHERINE P. AWAKUNI
Executive Director

DIVISION OF CONSUMER ADVOCACY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DIVISION OF CONSUMER ADVOCACY'S PRELIMINARY STATEMENT OF POSITION** was duly served upon the following parties, by personal service, hand delivery, electronic mail, and/or U.S. mail, postage prepaid, and properly addressed pursuant to HAR § 6-61-21(d).

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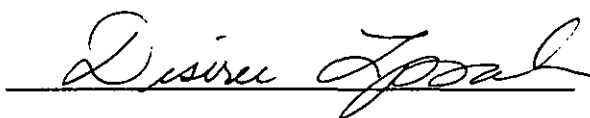
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DATED: Honolulu, Hawaii, October 2, 2009.

A handwritten signature in cursive script, reading "Desiree Zepeda", is written over a horizontal line.